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RECEIVED

MAY 15 2007

Ravalli County Commissioners

David S. Stelling
Helena Airports District Office
Federal Aviation Administration
2725 Skyway Drive, Suite 2
Helena, MT 59602

Re: April 24, 2007 Complaint of Mark Fournier

Dear Mr. Stelling:

On behalf of the Board of the Ravalli County Commissioners, I am writing to respond to the complaint from Mark Fournier regarding the Ravalli County Airport, Hamilton, Montana. I do not think that I can give a simple and coherent answer to everything included in Mr. Fournier's 41 page "brief". It is important to note, first off, that a number of issues raised in his complaint are not appropriate in this forum. Mr. Fournier discusses septic concerns as well as issues with a fuel spill. These are issues of state or county law and issues that must be dealt with by those entities. Suffice it to say that there is a difference of opinion on those matters. Additionally, Mr. Fournier appears to be attempting to bring complaints on behalf of other people as well as to direct complaints at entities other than the Ravalli County Airport. Those issues are likewise not appropriate for this particular process.

As I noted above, Mr. Fournier's 41 page, single paragraph brief is quite difficult to respond to. I have done my best to respond to the allegations, taken as a whole, though it is possible that in doing so I have left out some details. It may be that a hearing will be helpful to resolve this matter.

The purpose of the Airport Advisory Board is to make recommendations which are in the best interest of the airport and the County, not for specific individuals at the airport. The Advisory Board consists of seven members and one alternate. It expects the users of the airport and the manager to follow the rules set forth by the Commissioners. That said, the Airport Advisory Board has limited power. It only recommends to the Commissioners what action should be taken. Some recommendations are adopted, some are not. To the extent that Mr. Fournier's grievance is aimed at the Airport Board it is misguided. The term "Airport" throughout, therefore, refers to its governing body, the Ravalli County Commissioners.

A BRIEF TIMELINE OF EVENTS

As you are no doubt aware, this was a sleepy little airport until not very long ago. The regulations and procedures were not as polished as they are now, and certainly not as polished as they might be at LAX or O'Hare. Not so long ago, there were no complaints of anti-competitive behavior, in fact there was no competition to be had. The Airport struggled to find even one provider of services. At that time, the airport manager had an office inside a private hanger, where the lessee had a residence. Under FAA guidance, the Airport has taken many steps to come into compliance with the rules and regulations that govern its operation. All the FBOs selling fuel at Ravalli County Airfield in the past quit selling fuel until Steve Wolters purchased NorthStar. As an incentive to provide fuel sales, he was allowed to put his tanks in the fuel farm lease free. Hamilton Aviation, another FBO, had its tanks on lease free ground as an incentive, however that business closed. Once again, under FAA guidance, a reasonable lease rate is now being charged on all tanks currently in the fuel farm, and will be charged for any new leases granted there as well.

NorthStar had made a substantial investment in this business to make it work, and the services provided are quite beneficial to the airport. The Airport's intent for an additional FBO was for that FBO to also have a substantial investment on the airfield in order to sell fuel. The Airport desired an FBO to be involved in a minimum of three other different activities, have a pilot's lounge, bathrooms, and a hanger to store aircraft and do maintenance. The goal was that one FBO not have an advantage over any other on account of providing no other services besides fuel. These goals are reflected in the revised minimum standards. Mr. Fournier has a distinct competitive advantage over the existing FBO, because at this time he is providing only self-service fuel without the requirements for the additional infrastructure. That is why until Mr. Fournier completes construction of the various buildings and tanks he proposed in order to become an FBO, he has not been fully designated as an FBO. It is that infrastructure—not the fuel—that is the benefit to the airport. Fuel sales are the carrot to entice the other services.

Dave Hedditch, Chairman of the Airport Advisory Board has repeatedly reported to the Board of County Commissioners that Mark Fournier spoke to him after the March 22, 2006 Airport Advisory Board meeting. During that conversation, Mr. Hedditch has reported that Mr. Fournier told him that he intended to sell fuel below cost in an effort to run NorthStar Aviation out of business. When nearly a year had passed with no sign of construction or investment at the airport, the Airport's concern increased that Mr. Fournier's predatory pricing plan would leave the airport with no services at all.

The Airport threatened to take action against Mr. Fournier due to his dispensing Jet fuel from trucks without a lease to do so. Soon after receiving a 30 day timeline, and approximately one year into his lease term, he finally broke ground on a hanger site on lease #528. It is the position of the Airport that the first "plans" Mr. Fournier ever provided regarding the construction on lease #528 was the footprint plan dated by the Engineer April 6, 2007, and received soon thereafter. That lease was entered into almost exactly a year prior, on April 3, 2006. Mr. Fournier notes in his brief (at page 24, line 11) that "[h]e had his architect start designing a building." Given this statement's location in Mr. Fournier's seemingly chronological timeline, this took place sometime on or after April 28, 2006. Mr. Fournier appears to claim, via the statement he submitted from Mr. Caldwell that he submitted all of his plans prior to the adoption of his lease on April 3, 2006. How plans ordered sometime after April 28, 2006 and delivered on April 6, 2007 were part of the Airport's decision to approve the lease made prior to April 3, 2006 remains a mystery. There are no plans in the records of the Board of County Commissioners, nor do any members of the Airport Advisory Board, nor the Board of County Commissioners recall ever having seen any plans prior to the adoption of the April 3, 2006 lease. That the former airport manager, who is now a paid consultant to Mr. Fournier, says he remembers seeing plans is not very helpful to

determining the truth. More to the point, Mr. Fournier's letter to the Board of County Commissioners, dated December 23, 2006 (his exhibit 40 to this complaint) explicitly refutes his own allegation. "Under the current lease agreements, I have 18 months to build on the lease lots. I am still in the process of formulating the best plan for these buildings." Mr. Fournier was still figuring out a plan for the buildings in December of 2006, but submitted full and final plans prior to April, 2006?

The Airport sent numerous letters to Mr. Fournier, as well as made numerous phone calls to his attorney, requesting copies of the plans for lease #528 once it was clear that construction was set to begin. This eventually led to a "Cease and Desist" order from the County Attorney's Office. Upon receipt of Mr. Caldwell's letter the Airport attempted to get assurances that all requirements were met, even in the absence of any submitted plans.¹ These negotiations were not particularly fruitful. The Airport informed Mr. Fournier and his attorney that court action would commence the afternoon of April 23, 2007. The Airport agreed to one final meeting to discuss the matter and attempt to work out a solution. That meeting took place at 7:00 a.m. on April 24, 2007 at which time Mr. Fournier refused to give assurances that the Airport's demands would be met, such as affirming that lease #528 would only be used for maintenance and storage, and that fire fighting aircraft would not be impeded. As a result, the Airport sought and received a Temporary Restraining Order ("TRO") from the Montana Twenty-First Judicial District preventing Mr. Fournier from proceeding with construction on lease #528 until the Board of County Commissioners approved the plans. The Airport dismissed that TRO a week later upon receipt of a letter from Mr. Fournier's counsel that addressed its main concerns relating to taxiway access for the USFS SEAT base. However, those concessions were not received until after court action was taken, and the Airport has still not received any assurances that lease #528 will only be used for aircraft maintenance and storage—the stated purpose of the lease. The Airport hopes that Mr. Fournier is not constructing the hangar on lease #528 for a purpose other than aircraft maintenance and storage. If he is, the Airport has made quite clear that he may well be forced to modify the building or remove it.

FUEL

Mr. Fournier has claimed that NorthStar aviation would not sell him fuel. An investigation by the Airport into the matter found that in actuality, NorthStar would not sell him fuel at cost. Regardless, the matter appears to have worked itself out. There have been no further allegations of service refusal. The Airport's main responsibility is to prevent further instances of prohibited conduct, rather than punish for past wrongs.²

Mr. Fournier does not have a lease for a tank in the fuel farm. He has been attempting to sell Jet A fuel out of large trucks used as both storage and dispensing vessels. Pursuant to advice from the State Fire Marshall, as well as Mr. Fournier's leases, the Airport has repeatedly informed Mr. Fournier that he may not do so. Specifically, letters from the Airport were sent to Mr. Fournier on November 17, 2006 (his exhibit #36), December 12, 2006 (his exhibit #39), and finally, April 2, 2007 (his exhibit #44). The last letter informed him that pursuant to his lease, he had 30 days to stop selling Jet A fuel, as he only has a lease to dispense self-serve fuel, and no physical ability to sell self-serve Jet A. Though the 30 day time period has run, the Airport has chosen not to cancel his fuel lease at this time. This is done, once again, in the interests of attempting to resolve this matter without causing unnecessary pain at the airport. However, if this matter is not resolved soon, the Airport will take further action to prevent the unauthorized sale of Jet A, without a lease and contrary to fire codes.

¹ One of the letters erroneously refers to opening to the "East" when it should have stated "West."

² For instance, subsequent to this complaint, Mr. Fournier has alleged wrongdoing by NorthStar regarding the UNICOM system. The airport manager followed up with Montana Aeronautics, and then presented NorthStar with a sheet explaining what could be said over UNICOM.

Mr. Fournier does not have a lease for a tank in the fuel farm for a very simple reason: he stormed out of the meeting on March 27, 2007, where his lease request was being considered. He had asked for a lease in the fuel farm and been informed of the only two potential options. He could have a spot that was allowed to be a fuel farm per the ALP, but that had no access to it currently, or he could have a spot with access that was not allowed as a fuel farm per the ALP. If he chose the former, he would need to pay to have the road expanded. If he chose the latter, he would need to work with the airport manager and the FAA to get the spot approved as part of the fuel farm. That question could not be answered as he had stomped out of the meeting some time before. Since neither spot was currently useable, the Airport felt it was inappropriate to chose for him. Since he could not answer that question, no lease could be granted.

Mr. Fournier has been told that he may not sell Jet A fuel at this time because he does not have the physical ability to do so under applicable rules and regulations. He has a lease allowing him to sell self-serve Jet A fuel, but he does not have a tank allowing him to do so. He has been attempting to sell Jet A fuel out of tanker trucks, and has been told to stop. This is a violation as he does not have a lease to sell full service fuel. This is also a violation as he is attempting to store fuel in delivery trucks, in what appears to be a violation of fire codes and Department of Transportation regulations. Mr. Fournier has also been pumping fuel from his 100 LL self-service tank into trucks. Pursuant to the State Fire Marshall, this is a violation, as code requires a spill pad, fencing, and other items around a storage tank to pump fuel into a delivery vessel.

SETTLEMENT ATTEMPTS

The Airport has made numerous attempts to resolve this dispute by speaking to Mr. Fournier, and entering into settlement negotiations with Mr. Fournier over the law suit he filed against the Airport and NorthStar aviation. The most formal negotiations took place on March 26, 2007 and involved members of the Board of County Commissioners, the Airport Advisory Board, Mr. Fournier, and NorthStar. NorthStar was included in these discussions as it was a co-defendant in the action filed against the Airport. These negotiations broke down because Mr. Fournier demanded that he be allowed to move his FBO office to lease #528, which was leased for aircraft maintenance and storage only, and not designated for an FBO on the ALP. This change would have caused traffic flow problems, and would have required concessions from NorthStar such as altered aircraft parking arrangements and potentially lease swaps. Mr. Fournier was unwilling to discuss concessions he would have to make.

PARKING SPACES

Any number of changes have taken place with the parking situation at the airport in the past few years, many due to the SEAT base move. The Airport acknowledges that the division of parking spaces should be re-addressed, and in fact has already approached the FAA about this issue. The Airport plans to formally address this matter with the FAA at the follow-up to the meeting with Airport Advisory Board Chairman Dave Hedditch, which took place at the end of April, 2007.

FBO

Mr. Fournier's business arrangements have not been particularly clear. He has at various times alleged that he provided all necessary services, or had a partnership, or an operating agreement to do so. All of the leases in question require approval of the Airport before they may be sublet. If the leases were transferred to a partnership or LLC, those changes would require approval of the Airport. In a December 23, 2006 letter, Mr.

Fournier provided the Airport (his exhibit #40) with a copy of an operating agreement (dated February 24, 2006) between Pogo Pumps, Max Martz, and Robert Vallance. The Montana Secretary of State's records note that Pogo Pumps was formed on June 2, 2006. This raises various questions about the authenticity and enforceability of that agreement.

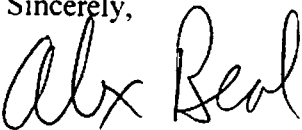
The minimum standards under which Mr. Fournier's leases were granted were remarkably reasonable, too reasonable even, per many at the FAA. As such, the Airport reviewed the standards from Bozeman, West Yellowstone, and Cody, WY as a basis to work from. AC 150/5190-5, 1-3b. Single Activity, states that, "[w]hen an exclusive rights violation is alleged, whether the opportunity to engage in an on-airport aeronautical activity was available to everyone who met the relevant and reasonable minimum standards determines whether enforcement action will be necessary."³ The airport's minimum standards required Commercial Fueling Providers to be an FBO, See Minimum Standards, adopted 1-14-2005, F4. They require the entity providing the fuel service to have a lounge, restrooms, and a phone. *Id.*, F2. With the prodding of the FAA, those minimum standards were modified and adopted March 13, 2007. The Airport has learned from this experience, with the FAAs help. The Airport has not chosen to have one FBO operate out of convenience, but rather welcomes other FBOs—so long as they follow the applicable minimum standards, submit plans as required by their leases, follow fire codes, etc... See AC 150-5190-6, 1.3(b)(2).

CONCLUSION

If there is to be any point to the Airport having minimum standards and rules and regulations, the Airport must be able to enforce them. Mr. Fournier needs to come clean. He needs to submit his building plans to the Airport so that they may be reviewed. He needs to explain what his business arrangements are so that the Airport may consider them. He needs to sit through a Commissioners' meeting long enough that the public may comment on his proposal, the Airport Advisory Board may make its recommendation, and Board of County Commissioners may ask all necessary questions. These are the requirements under Montana law that must be met before his request for a stationary fuel tank may be considered. He needs to stop selling fuel in a manner that is contrary to his lease terms, and to fire codes.

Mr. Fournier's complaint alleges economic discrimination, the granting of an exclusive business right, and improper fee and rental structures. For the Airport to have addressed every allegation would have taken 100 pages. The Airport hopes that it is sufficient to demonstrate that it welcomes competition, so long as all competitors follow the rules.

Sincerely,



Alex Beal

Deputy Ravalli County Attorney

³ That has been superceded by AC 150/5190-6, though that circular (-5) was in force during almost all pertinent times of Mr. Fournier's complaint. As the Airport has never attempted to convey an exclusive right, both circulars seem equally applicable. Civil/Aeronautics/Fournier FAA Complaint/Ltr.Stelling.5.11.07